



Michigan

Alliance for

Competitive

Telecommunications

MiACT STATEMENT IN SUPPORT OF ADDING TELECOM MERGERS TO HB 6358

Having previously submitted comments to Representative Proos in support of limited telecom merger approval for the MPSC, MiACT would like to again indicate that the MPSC should be given limited telecom merger approval as outlined in a June 23, 2006 submission. Attached please find a copy of those prior comments.

**Michigan House Committee on Energy and Technology
September 6, 2006**

426 S. Ottawa

Lansing, MI 48933

PH: 517.319.4040

FAX: 517.319.4041

www.miact.com





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MiACT Comments Regarding Draft Bill To Give the MPSC Merger Approval Authority

**Submitted to Rep Proos, Vice Chair, Michigan House Committee on
Energy and Technology**

Friday, June 23, 2006

426 S. Ottawa

Lansing, MI 48933

PH: 517.319.4040

FAX: 517.319.4041

www.miact.com



MiACT COMMENTS REGARDING DRAFT BILL TO GIVE THE MPSC MERGER REVIEW AUTHORITY

The Michigan Alliance for Competitive Telecommunications (MiACT) would like to submit the following comments regarding the bill draft granting the MPSC merger review authority. For the reasons outlined in this document, we believe that the MPSC's merger review authority should also include review of some telecommunications mergers. We appreciate the opportunity to comment on this important public policy issue.

As traditional regulation of the telecom industry continues to decline, market oriented solutions to safeguard a competitive market are needed. Because of the fact that the telecom industry was pervasively regulated for so long, pro-competition provisions are needed to insure a competitive market continues to exist. We cannot lose sight of the fact that the largest incumbent providers for a very long time enjoyed a luxury many businesses would envy, government prohibition against competition.

That extensive period allowed the large incumbents to develop their infrastructure, including the "last mile" connection, without any competitive pressures. Today that last mile connection remains a bottleneck that competitors and consumers who choose a competitor's service must continually scale. That is why state merger approval for the large incumbent companies is an appropriate subject for review by the MPSC.

According to MPSC comments at the May 17, 2006 hearing on merger review, thirty five states have some kind of state telecom merger approval. They may not vigorously exercise the authority in all cases but the fact that they possess such authority gives them an important tool, that tool being to insure those states interests are protected as the result of a merger. Michigan is in the minority in not insuring that Michigan citizens and customer's interests are protected as the result of mergers involving the largest incumbent telecom providers.

As consolidation in the telecom industry continues, Michigan is in effect conceding its power to protect the interests and concerns of Michigan consumers to the other thirty five states when a merger occurs. As these states review future mega mergers for home state impact, Michigan citizens, consumers, businesses, workers, and competitors will be forced to watch from the sidelines. Depending on the extent of future mergers, this lack of state authority could have a negative impact on the Michigan economy.

In cases involving multi-state mergers, the states with merger approval powers will be in a position to insure that the interests of their citizens are protected. As the thirty five empowered states obtain state specific protections for their citizens, Michigan could be one of a minority of states that will see losses as companies cover the commitments to those thirty five states. Lacking merger approval statutory authority, Michigan would be unable to counteract such a development.

Giving the MPSC telecom merger approval would also give those in Michigan impacted by the development a forum within the state to raise concerns. Only a few can afford the time and cost to travel to Washington, DC to petition federal agencies with concerns about the impact of a particular merger. State level approval provides consumers, small businesses, workers, and small competitors a Michigan forum to ask that their interests not be disadvantaged because of a proposed consolidation. It would also give the Michigan Attorney General a forum to raise issues regarding such action.

State level approval power for the states "competition cop", the MPSC, would help protect against the local telephone marketplace becoming an unregulated monopoly. Existing Michigan telecom law passed with the assumption that competition would continue to exist. If mergers involving the largest incumbent providers destroy the delicate balance in the competitive market, we would be left with the potential of a single monopoly provider and no effective regulation.

Competition has replaced the day to day regulation of the telecom industry based on competition continuing and hopefully increasing.. Limited merger approval would be an important pro competition tool for the state to insure Michigan maintains and expands upon the competition that exists today when future mega mergers occur.

Specific Recommendations

1. Language needs to be added to the draft that specifically includes telecom merger approval power for the MPSC within the provisions of Sec.6R of the draft legislation.
2. To insure that the state merger approval for telecom only applies in cases where there is a major impact to the state, language limiting the review authority to apply only to mergers involving the largest incumbent providers needs to become part of the bill.
3. As a further limitation, language should be included that gives the MPSC thirty days from the date a merger involving one of the largest incumbent providers is announced to decide whether a particular telecom merger warrants MPSC review. If the MPSC does not start a proceeding within 30 days, the merger would be deemed approved.
4. In the limited cases where a review of a merger for telecom is conducted, language should be included in the draft bill that the review be conducted pursuant to a contested case proceeding.
5. To make sure that any Michigan review does not needlessly add to those at the federal level or within other states, language limiting the Michigan review to not exceed ninety days should become a part of the bill that is being developed. A ninety day limit from when the contested case review is commenced should

provide a proper balance between the need for a review in limited cases and the need for a speedy review.

6. To insure that the large incumbent providers do not use an expedited review time frame to simply run out the clock, language prohibiting such a delay tactic should be included in the bill. In other words, an incumbent could not sit on its hands and let the tight time frame for review expire without participating in the review process. With the very short time frame that would exist for a review no delays should be allowed that would make it impossible for the MPSC to complete its task.

Conclusion

We believe at the conclusion of your consideration of this important public policy matter, you will agree that limited state telecom merger review powers are needed. The limited authority as outlined above will properly balance Michigan citizens' needs for a forum to raise concerns with the need for any examination to be used sparingly and in an expedited time frame.